Discussion Of The New Claims 13-20, Inclusive

If the Examiner has any suggestions as to improving the form or content of the claims presented he is respectfully requested to contact the attorney of record in this case. There is no "magic" associated with the precise language used in the new claims presented in the preceding. They are believed to more clearly define the coverage for which patent protection is sought than any of the prior claims in this or any prior related case.

The examiner will note that the two primary claims now in the application - claims 13 and 20 - are closely related to the original claims 1 and 11 but differ from these original claims primarily - but not entirely - as to the manners in which their content is stated. This is a consequence of a party assisting the Applicant desiring to use manners of expression in accordance with his prior experience. Probably it should be noted that none of them uses the expression "cold fusion".

It is noted that claim 13 specifies that the method claimed in it produces heat, but that It does not say anything relative to a nuclear reaction or anything of the like. It is also noted the new claim 20 uses language corresponding to that in the first few lines of page 11 of the specification to make it clear that this claim 20 relates to the nuclear field.

The new claims 14-19, inclusive, are dependent on the new claim 13 and, in addition, all set forth with different degrees of specificity the concept of collecting and gathering products of the cell reactions and reacting them and then returning the resulting the reaction product to within the cell proper. As pointed out in the

specification as filed the subject matters of these later claims 14-19 not incorporated by reference from claim 13 pertain to a safety feature. Thus, they do not have the breath of the claims 13 and 20.

Since the new claims submitted herewith are very closely related to the claims considered in the prior action it is assumed that they should be discussed in all parts of this document as if they were in fact the claims previously considered. It is believed that this procedure will be facilitate further consideration of this application.

The Effect Of The Disclosure Of Currently Disclosed SAWS Documents

The amendment preceding this document apparently filed Nov. 16, 2007 raised a number of speculative related points relative to whether or not the present application has been examined in accordance with the Office's Rules. All of them were related to the possibility of the Office having a policy against the issuance of patents on cold fusion and/or the issuance of patents which might cause the Office to be ridiculed or embarrassed. It is considered that the release of the enclosed SAWS documents confirms that the speculation in connection with these points was well founded.

This is considered to be established by the title "Cold Fusion Applications" of the initial of the enclosed SAWS documents. It is considered to be additionally established by items B6, B7, C2, C3, and C4 of the last of these documents. It is considered that it would be premature to again raise all of these points and related matters until any presumption which might arise from the history of this application and from the existence of the SAWS documents which might be detrimental to the Office is dispensed with.

The Examiner or, if, as expected, a superior concerned with policy issues such

as those being raised is urged to accept this suggestion ub acting upon this appliction. Compliance with this request will go far in clearing up problems relative to the Office enforcing what is in effect "secret law" as is at least partially disclosed in the enclosed SAWS materials. As long a there remains a presumption that a vestige of such secret law is being applied by the Office the reputation of the US patent system will continue to suffer from any and all actions in this or any other application, particularly any application pertaining to a "pioneering" invention.

One of the problems leading to virtually each rejection of objection in the preceding 50 page Office action may be only peripherally related to the issue as to whether or not this application has been properly examined under 35 USC 131 in accordance with "secret law" . This is related to the fact that the meaning of any title or name applied to any new or "pioneering" invention is usually not completely or adequately defined, known or otherwise established as this title or name is gradually accepted and for years afterward

It is believed that all of the rejections and objections on the merits of the claims have been erroneous because of the fact that they are essentially based on or derived from an improper understanding of the expression "cold fusion". The subject matter claimed can be argued to be based on a type or species of cold fusion which is distinctly different from the traditional and original "cold fusion".

The Meaning Of The Generic Expression Or Term "Cold Fusion"

It is considered that major problem in connection with this and other related applications concerns the meaning of the generic expression "cold fusion". Although the outstanding Office action extensively uses this designation nowhere in the record is there any clear cut definition of what is meant by it.

It is submitted that as a result of this the series of objections and rejections in this case is in error because the individual "items" in this series of refusals do not relate to the precise subject matter of the disclosed and claimed invention. As a consequence of this each and every objection and rejection directly or indirectly based upon the broad, generic expression "cold fusion" or any substantially related designation which is not specifically related to claims in this case is traversed. Reconsideration of all such objections or rejections is requested.

It is noted that nothing indicating the existence of any generally accepted definition of "cold fusion" or clearly indicating that it is a recognized generic term appears to have been cited or considered by the Examiner in acting upon this case. One can speculate that this has resulted in his being erroneously confused as to the meaning or meanings of this expression. This also makes it clear why the rejections and objections in the outstanding Office action do not precisely relate to what is claimed in the present case .

Because of the comparatively recent development of the term "cold fusion" probably the best indication of its probably continuously varying meaning is found the the internet "Wikipedia". Since it was probably not considered by the Examiner a recently obtained printout of the discussion on this in the Wikipedia is being submitted as an attachment to this document marked as Exhibit 1.

While questions about reliability can be raised relative to this Wikipedia reference it appears that the Office consistently relies upon it. In connection with this point reference is made to Aharonian's Patent News @ns1.patenting -art.com (dated Tue. Aug. 1, 2006). In this electronic "news" he indicates that many patents have cited this publication as "prior art" and that Art Units of the Office "...are including the Wikipedia in their "search templates"". It is clear that the references cited and often

discussed in this internet "publication" are at least good sources of information as to various publications which the Examiner should have but probably has not considered.

. One can speculate that this has resulted in erroneous confusion as to the meaning or meanings of the indefinite term "cold fusion" and the relationship of much or all of the significant prior art relative to what is claimed in the present case. This confusion is considered to be the result of "cold fusion" being defined as in the Wikipedia as follows:

> "*By definition, Cold Fusion is a nuclear fusion reaction that takes place at or near room temperature and normal pressure instead of the millions of degrees required from plasma fusion reactions.*"

This definition can and should be criticized on a variety grounds. One of these grounds is that it is primarily deficient because it fails to say or even imply anything relative to cold fusion type reactions being carried out in an electrolytic cell or, more significantly, the nature of the reactants employed in any type of cold fusion or other matters related to what happens when various reactants are used in an electrolytic cell. All of such things help establish that "cold fusion" is a broad, indefinite type of generic expression covering a great many different specific concepts.

Acidic and Basic Reactants Are So Different That They Cannot Fairly Be Considered Equivalents

From references cited in the Wikipedia and others it is considered to be a matter of common knowledge that Fleischmann and Pons (herein after referred to as F&P) disclosed the use of an electrolyte in an electrolytic cell which was about as

alkaline or basic as one can obtain. Those investigating their work did the same. If the Examiner is not willing to concede the correctness of these statements the Applicant will supply references establishing their accuracy. As opposed to this as recited in the claims presented in this application the applicant's invention requires the use of an acidic electrolyte instead of an alkaline electrolyte. Some of the claims specifically require the use of a significant amount of very acidic sulfuric acid.

This difference is critical and unobvious. When considered in connection with the quoted definition it confirms the generic, non specific, indefinite nature of "cold fusion" and the existence of distinctly different species under it. Probably much of the semantic problem resulting from the broad, generic nature of the expression "cold fusion" should be avoided by referring to the Applicant's invention as "acidic electrolytic cold fusion" or simply "acidic cold fusion" and by referring to the work of F&P and those who have investigated it as "alkaline cold fusion".

The significance of the two different species discussed in the preceding paragraph noted is easily illustrated. Every housewife knows that something normally unexpected or undesired occurs when an aqueous acid such as vinegar is substituted for an alkaline composition such as baking powder or baking soda in making something such as bread. This is a matter of basic chemistry. No one in the worked over and repeatedly investigated generic field of cold fusion would logically expect to achieve an operative process bv the replacement of an alkali as used by F&P with a mineral acid such as sulfuric acid, particularly when there is no clear, effective disclosure of such a substitution or of the desirability of making such a substitution in the precise manner claimed.

Under the circumstances is the Examiner's blithe use of "cold fusion" in both objecting and rejecting in the preceding Office action reasonably justified? The

answer is clearly "no" because none of the references, whether taken alone of in combination, fairly shows or suggests the precise procedure including the reactants employed and claimed by the Applicant. Hence, all rejections and objections based on any use of or reference to "cold fusion" alone except when it is used in a obviously broad, generic manner are respectfully traversed. Reconsideration of them is requested. Without the precise meaning of :cold fusion intended intended by the Examiner being clearly stated the Applicant cannot be expected to effectively respond to the current Office action.

In view of this the Applicant once again traverses all objections and rejections of record in which the expression "cold fusion" is used without its meaning being clearly indicated.

The Objections And Rejections of Sections 2, 3, 5 and 6 Of The Office Action Mailed April 27, 2006 Are Traversed

The objections to and the rejections of claims in set forth in the preceding heading are traversed because under the current standards of the Office the disclosure in the specification is of a conventional, adequate type, particularly when the current literature and talks at relevant professional meetings, are sufficient so that the claimed invention can be reproduced. It has been "repeated" many times. Because of this the claims presented in it are adequately supported by the specification.

In drafting this document it is thought the Examiner's position on these matters is probably a consequence of his failure to review the appropriate technical literature with an open, uninfluenced mind. Was he present at the recent March meeting of the American Physical Society held in Denver in which the there were 20 papers on cold

fusion presented including one on subject matter pertaining to in this application. Has he attended other recent similar gatherings? Why has he failed to cite and take into consideration the current cold fusion literature, particularly that pertaining to the subject matter claimed? The current literature on the subject matter claimed claimed is so clear that qualified individuals have been able to practice the claimed invention, The current disclosures on subject matters related to what is claimed are so common that it is that the Examiner is requested to take judicial notice of the adequacy of the disclosure of this application. This action is requested.

There is no point in spending time in dissecting and attempting to condemn the disclosed procedure for carrying out the Applicant's claimed invention on the basis of hind sight destructive wisdom. This is especially the case since It is considered that the objections and rejections discussed in this section of this document must be an expected consequence of the Office SAWS "secret law" policy which at present is not completely known to the Applicant.

The Applicant is handicapped in responding to the noted grounds for refusing this application since he is not aware of what, if any references relative to the acidic species of the cold fusion claimed in this case were considered by the Examiner and then not cited. Without this knowledge of these references it is not reasonably possible to be effective in responding to the refusals on the basis of 35 USC 112 without extensively encumbering the record in this case.

When such information favorable to an applicant is simply ignored by an examiner, when an examiner is deprived of access to current developments in a field or information is deliberately concealed in an instinctive reaction to a policy such as the SAWS policy how is it possible for him or herto fairly act upon an application such as this application? This is related to the fact that there is appairantly no written or

probably oral requirement for an examiner to deal with an application with the same candor and fairness which applicants are required to use in dealing with the Office. If there is any such obligation where is it stated?

The Use Of "Improper" References

It is believed that all of the rejections and objections discussed in the preceding section of this document are based upon unacceptable assumptions, conclusionary statements and the like and not bona fide references. This is easily illustrated to by referring to a the start of a series of these matters starting on page 2 of the outstanding Office action:

1. The statement "*there is reputable evidence..*" which gives no clue as to what constitutes "*reputable*" evidence on disputed topics such as those indicated.
2. The statement "*the invention... is considered as being based on the cold fusion concept of*,,," when this can be considered to be serious wrong and to give an erroneous impression.
3. The various statements relative tot he P&F "concepts" *which are at best incomplete and misleading.*
4. The statement that "*Thus it is clear that the Applicant's invention is jut a variation of the cold fusion concept ,,. [which] .. is an unproven concept or theory.*" .....

And these are followed by a long collection of one inaccurate or misleading statements or conclusions. Such items are not proof as required in refusing a patent application. At best thay are unsubstantiated hearsay.

Perhaps the most objectionable of these transgressions involves the

rejections and objections on the basis of "*The general consensus of those skilled in the art...*" and similar unsupported conclusionary statements. At best these are opinions and not factual references. They are not properly used in refusing a patent application, especially when there is no way of determining who had the opinion, any facts it was based upon, when it was formed and the identities and backgrounds of those who accept the opinion.

The situation with regards to this type of essentially intangible reference reminds one of the problems Galileo had in holding that earth was spherical and not round which led to his death. At the time he set forth his views on this topic the "*general consensus*" of scientific throught as held by the Pope and other "lerned" men of the time was that the Earth was flat. Just as the experts at the time thought that this "general consensus" was wrong the Examiner clearly adheres to concepts which are wrong and outmoded.

This is in error. Many factors can effect and affect a new development in the chemical and physical fields. Knowledge relative to a new invention can only grow through experience gained though a frequently frustrating series of circumstances. As this experience grows knowledge grows and, usually, opinions change. Under the circumstances the reliance upon unsupported, not clearly delineated, conclusionary matters in all of the rejections and objections is wrong and must be withdrawn.

The Disclosure Is "Enabling"

It appears that the basis of the refusals and the related comments in the noted Office action is that the disclosure of the application is not "*enabling*". This is wrong. This erroneous view is supported by a series of conclusionary statements such as

"*There is no reputable evidence of record to support ...*" the content of the claims and so on. The Examiner has indicated that he considers that the content of the claims and specification are based "*...on the cold fusion*" concept of F&P and then proceeds to ignore the fact that the Applicant is seeking protection on a particular acidic species within the genus cold fusion.

To make this objectionable he seeks to support his position by a series of assumptions as to cold fusion which at best are mere half truths. For example the allegation that the Applicant's invention is just a variation of of the cold fusion concept set forth by F and P." ignores the fact that the applicant has changed the fundamental character of the work done by F&P by switching from the use of a very basic electrolyte to an entirely different acidic type of electrolyte. The Applicants species of cold fusion "works"; the F&P species of cold fusion is highly controversial and is frequently considered to be inoperative in character. If anything this indicates the Inventive character of claimed invention.

The fact that the disclosure in this is adequate to enable anyone with reasonable skill to practice the invention without any significant experimentation is also believed to be indicated by the disclosures of various investigators cited in the enclosed Wikipedia printout. The broad aspects of the Applicant's invention as set forth in the broadest claims presented herewith - claims 13 and 20 - set for a physical apparatus - an electrochemical cell - of a type which has been well known for many, many years and deviate from what F&P did primarily by substituting an acidic electrolyte for a distinctly different basic electrolyte in otherwise using the cell in an obvious manner. Reconsideration of the items involved in this discussion is requested because no reasonably qualified electrochemist who has had any experience in using an electrochemical cell as indicated and who is not influenced by

prejudice of one sort or another would have little difficulty in practicing the claimed acidic species of the genus cold fusion.

In this connection it is noted that patent specifications are not expected to be "how to do it" manuals for those not versed in the field of an invention. Because the Examiner is a "primary examiner" handling this electrochemical type application it is considered that it would have been virtually impossible for him to avoid knowing of cases establishing this. Under the circumstances it is considered to be a waste of time for the Applicant to look them up and cite them in this response. This is particularly the case since this matter of ignoring the "enabling" character of the specification is just another aspect of the still not completely known or understood SAWS policy.

The specification in this case does not include all conceivable details of the present invention because those details of how to practice the invention which are omitted are within the routine skills of electrochemists in the specific field of the invention. If the corresponding skills required to practice the alkaline cold fusion of F&P were not of a routine nature within the ability of such individuals how would they have been able to exhaustively investigate the F&P species of cold fusion?

To establish that there has been such exhaustive investigation reference is made to the enclosed Wikipedia discussion. Reference is also made to the fact that the Examiner has apparently deliberately ignored the work as set forth in the documents supporting the two Ph.D. and seven masters degrees which have been issued in connection with research on the process set forth in claims 13 and 20, This work is believed to be known to the Examiner. Has it been ignored as a part of the campaign by the Office against anything falling within the scope of the generic topic of cold fusion.

If, by any chance the Examiner is not aware of the dissertations and theses setting forth such work it is noted that they are believed to be available to him on interlibrary loan. They cannot be forwarded to the Office with this response since they are in bound library volumes which the suthorities of the library hold them do not want to relaase. The attached Exhibit A lists them and summarizes the their contents. In the cumulative they show that details of how to practice the claimed invention to be within routine skill and that except in one instance those doing the work described in the exhibit clearly established that the claimed process "works"..

The fact that they were not cited by the Office is considered to be a part of the Office's failure to adequately examine the applications for such patents with fairness and candor. Although the full content of .the Office SAWS policy is not yet known at present there is at least an inference that this is the case. Is this fair? Is it proper to wear down an applicant in an economic sense so as to avoid issuing a patent?

The Rejection Claims As "Lacking Utility" Is Traversed

The rejection of section 4 of the current Office action is rather difficult to understand in view of his statement on page 39 of this action "*...this production of "excess heat" is considered to as being the applicant's specific utility.*" Since heat is required for all sorts of purposes in the present industrial society in the US the Applicant fails to comprehend the logic of the claims in this case being rejected as lacking utility. Therefore this rejection is traversed.

In case the quoted statement was made in error or as a part of the use of an "eclectic", improper anti any application related to the generic topic of cold fusion examination conducted pursuant to the SAW S or similar policy as previously discussed it should be noted that the dissertations and theses indicated in the

preceding discussion all except one demonstrate that the invention as set forth broadly in claims 13 and 20 does "work" to produce excess heat and transformations as apparent recognized by the Examiner.

The state university where the work set forth in these documents was performed carefully examined their research recorded in these dissertations and theses and simply would not have issued the noted advanced degrees if this work was flawed. Neither would the Applicant have been invited to give talks at a continuous series of professional conferences. The Examiner must know of this activity from the technical literature in the field of the invention. If he doesn't a list of the talks given in recent years can be given so that the Examiner can compare their content to the content of this and related prior applications.

"Absolute" Utility Is Not A Prerequisite For Patent Protection

In connection with the issue as to the operative character of the claimed subject matter it should be noted that there is no requirement in 35 USC 101 or elsewhere that any chemical or similar or related type invention consistently function in an intended manner. Inventions is connection with potentially major developments cannot be fully understood immediately after their conception. It takes both time and experience to learn of unexpected "quirks" with respect to any such invention. The fact that these are normally discovered over a prolonged period after the conception of an invention dos not mean the original concepts of the invention lacked utility.

This is easily illustrated by referring to medical field. Common new drugs are patented more or less as routine matters and yet no drug is believed to be consistently operative in an intended manner for its intended purpose. In this connection it is noted that most if not all drugs are to a significant degree effective as

placebos and not as they are intended to function. The logic in allowing the patenting of drugs in spite of their frequent inoperative character has apparently been overlooked by the Office. Why? Is the Office acting pursuant to some non publicly disclosed policy instituting different standards for patentability of different field of invention?

There is no secret that this application pertains to a relative new, undeveloped field of technology. It is not surprising that any invention in such a field will, on occasion, not "work" in an intended manner as knowledge is accumulated relative to the invention. This type of thing has occurred in connection with the subject matter claimed. Speculation that these failures are necessarily the result of the invention completely lacking utility when it does operate on occasion is unwarranted and unjust. Part of the development of any invention requires routine experience in locating items interfering with or otherwise affecting or effecting the operation of the invention in one manner or another.

Thus, it is considered that one advocate of the claimed subject matter found that he had encountered problems in practicing the invention as a result of contamination of an electrode and the consequences of the presence of an impurity. Problems such as this are to be expected with any new significant development. If no patent should ever issue on a new development which was burdened by operative or related complications society would be deprived of the motive to investigate and develop new products and processes.

The Rejection In Section 5 Because Of An Alleged Failure To Disclose "The Best Mode" Is In Error

It is believed that it will be apparent from the preceding discussion that the

Examiner is believed to know that no patent application is required to contain a set of detailed instructions encompassing essentially routine matters within the conventional knowledge of those skilled in the field of an invention as claimed in the application. This rejection is believed to be nothing more than an extension of a "secret law" applied by the Office pursuant to an implied by not specifically stated anti new development SAWS policy designed to wear down any cold fusion applicant to the extent that any application on this topic is abandoned. Under the circumstances this rejection is traversed for the reasons stated.

It is also traversed and reconsideration of it is requested because the "best mode" requirement of 35 USC 112 does not require routine type knowledge and procedures within the scope of normal skill in the field of an invention to be delineated in a patent specification. It is not logical to assume that details relative to the practice of an invention are omitted merely because a patent application does not contain a detailed set of instructions as to the practice of an invention. Such details are apparent from the extensive literature on the claimed invention.

The Rejections In Sections 6 Of The Office Action Mailed April 27, 2006 Are Traversed

Although the subject matter of the rejections of Section 6 of the outstanding Office action are believed to be adequately argued in the preceding several additional matters can be noted in traversing these rejections. The first of these is that all of the claims have been rewritten so as to improve their form and, in so far as form relates to content, their content. Reconsideration of them is requested. They are not vague, indefinite and/or incomplete to any greater extent than the claims which normally issue in patents. Thus, they meet the standard of 35 USC 112.

In rejecting the claims in this section of the pending action the examiner apparent believes that they should contain all of the routine details normally found in a set of routine instructions such as would contain details unfamiliar to a party not having a background in the field of an invention. The claims are supposed to "define" an invention, not to set forth routine details with respect to practicing it. Is this another wear the applicant down type rejection derived from the "secret law" which seems to be related to the SAWS policy and procedure and its various not yet disclosed aspects.

The Rejections Set Forth In Sections 7 t0 12, Inclusive Are Traversed

It is considered proper to discuss all of the rejections of sections 7 to 12 of the current Office action together since they are all based upon a single Pons et al document or Fleischmann et al taken either alone or in any of a series of combinations. All of these rejections are considered to be a part of the campaign against the issuance of patents on subject matters as specified in the only partially known "secret law" SAW S Office policy or programs. As indicated by the preceding paragraph this effort is believed to even extend to the economic level of making things so complex and expensive for the applicant that he will give up any effort to obtain the patent protection to which he is entitled.

That the Office is doing this in the present case is believed to be evidenced by the series of rejections essentially based upon a single reference - the Pons et al publication cited. There are several reasons as to why these rejections are in error. The first of these is that the F&P invention as set forth in the primary references applied is not considered to be an invention as this term is used in the US Patent Law since as pointed out in the Wikipedia document submitted herewith. There is and

apparently always has been an apparently valid belief that the particular species of alkaline cold fusion disclosed in this article "works" or is operative.

The wording of section 2 of the current Office action seems to indicate or suggest that the Examiner shares thatthe view the Pons et al species of cold fusion is and was inoperative. The fact that in spite of the extensive work done trying to establish the utility of the P&F concepts as discussed in the precise paper applied in the rejections discussed in the current part of this document there has been no known commercial utilization of these concepts. This evidences that these concepts were inoperative or invalid. There is much that tends to establish the validity of this point. Judging by the content of the current Office action the Examiner shares the view that P&F did not have or achieve an invention in the field of cold fusion.

If this is the case there is no apparent reason as to why the rejections on the applied references is anticipatory to the claims as now presented. This is particularly the case since it appears that F&P abandoned their alkaline species of cold fusion. Presumably this is now so well known to the Examiner that the Examiner can take judicial notice of their failed efforts to achieve consistent operation of their species of the generic concepts of cold fusion. He is respectfully requested to take such notice.

The Examiner's statement in the second paragraph of section 7 of the Office action that the mere existence of a publication such as the Examiner has applied in this case shows that the subject set forth in it "*...was not abandoned...*" is clearly in error. It is basic property law that whether or not something is abandoned by a party is a question of the party's intent. On this point the Examiner is requested to refer to authorities such as Black's Law Dictionary. The mere fact that something was published does not establish anything with respect to the rights to a possible invention as described in the publication unless there is a clear statement in the

publication or elsewhere indicating an intent to abandon rights to whatever was described in the publication. Collateral facts may establish such an intent.

From this it is apparent that the affect of the cited Pons et al publication is not what the Examiner has indicated. It is apparently only a discussion of a type of process which has been considered not to be operative or to "work". Under the circumstances it can 't be considered a valid reference against the claims, particularly when the latter are directed to a species of cold fusion which is basically different from that of the P&F concepts.

Because of the frequently discredited character of these concepts no one would be expected to derive the process claimed in claims 13 and 20 in this case from any disclosure of the P&F work such as is found in Pons et al document. Instead any such disclosure would be expected to be a clear indication to any one not to do anything falling within the discussion within the Pons et al document or any other related disclosure. In effect when considered what is considered to be common knowledge the Pons et al document is like a sign saying " Don't Try What Is Disclosed In This Document - It Will Not "Work".

Because of this no one can reasonably believe that it suggests that any one would achieve an operative process as claimed by doing what the applicant has claimed. Further there is nothing to suggest any of the various hindsight wisdom type combinations proposed by the Examiner. To be fair any combination of references must be based upon a basic suggestion in the primary reference of the combination. No such suggested is clearly indicated in those references applied in the various combination references of record.

<u>The Rejection of Claims On Dash Et Al Is Traversed</u>

The rejection set forth in Section 13 of the current Office action is respectfully traversed. As one might expect this rejection is not as clearly delineated \ and is rather puzzling, particularly since the Examiner has not chosen to clearly delineate his position in connection with this rejection This will be easily apparent from a view of the abbreviated character of this rejection.

The rejection indicates that it is made under 35 USC 102(b) which says nothing about the Doctrine of Continuity governing what is the effective filing date of the present application. The Manual section 201.11 cited in the rejection was consulted using a computer. This resulted in a 22 page printout in which its contents were set out in closely spaced comparatively fine print. A review of this document revealed nothing particularly significant relative to 35 USC 102. Under the circumstances in responding to this rejection the applicant can only speculate as to the Examiner's logic in making it.

The Applicant's best guess is that the Examiner intended this rejection as a type of res judicata rejection. Any such rejection would be improper since the prior case involved a different fact situation than is currently present with respect to the pending application. If this rejection is intended to be based on the filing date of the application involved in an earlier application this rejection would seem improper. This is because the issues of the sufficiently of a disclosure and of the applicability of 35 USC 120 are distinctly different. It would seem that this is not a case involving priority under 35 USC 120 since this code section is not mentioned in the pending Office action.

Because this specific rejection is not clear it is respectfully traversed. Possibly something got left out of a draft in preparing the current Office action. It is equally possible that the Examiner may have thought that complete content or intent of this

rejection would be apparent. Unfortunately it isn't. Of course there is the possibility that this particular rejection was sent out in the form in which appears as a part of or in accordance with SAWS or similar policy to discourage by any means possible applicants from obtaining protection on subject such as cold fusion. This rejection is also traversed because of this possibility.

The Failure Of The Examiner To Disclose And Consider Material References Has Resulted In The Denial of "Due Process"

This failure of the applied references to anticipate the specific content of the claims presented when considered in connection with the absence of pro cold fusion materials in the various rejections and objections discussed in the preceding is considered to amount to a denial of substantive due process, This is not believed to be a matter of free choice by the Examiner, but is believed to be related to the Office SAWS policy involving what can be considered as "secret law". Much of the latter is believed to be not yet completely known to the Applicant. Under the circumstances it is believed that the this denial of due process of law in fact does not primarily involve a customary type of complaint against an examiner but goes to the merits of the examination of this application in accordance with the SAWS materials.

This denial of due process is particularly onerous in view of the fact that the Examiner clearly did not cite and apparently refused to mention many references which he should have considered instead apparently followed the practice of picking and choosing and then citing and using only references and decisions which supported the "official" anti cold fusion policy of the Office. He even failed to clearly acknowledge and discuss the fact that there has been extensive controversy in the past relative to the F&P species of alkaline cold fusion. The fact that there has been

such controversy and that much has been written with respect to it is clearly well known common knowledge as shown by the enclosed Wikipedia article and many other materials

Doesn't basic fairness require a recognition of the fact that any controversy has at least two sides? Isn't the examination of an application under 35 USC 131 supposed to involve a fair consideration of all aspects of a controversy? Since the proceedings to obtain a patent are not supposed to be adversarial in nature like traditional litigation, isn't there an existing implied obligation requiring an examiner to inform an Applicant of all reasons known to the Office indicating that an application may or may not meet the various statutory criteria for a patent to issue? Doesn't this obligation correspond to the duty to disclose in response to discovery in conventional litigation?

This can be stated in another manner. Isn't it improper for an Examiner to withhold from an applicant material information which is inconsistent with the refusal of an application. Any such withholding of information clearly creates an inequitable situation in which the parties - the Applicant and the Office- are held to entirely different standards of conduct which, in a case such as the present, favor the Office. One party should not be favored over another in the usual negotiations relative to the issuance of a patent.

This is particularly the case to avoid charges of improper conduct as are discussed in this document. Since an applicant or anyone reasonably associated with the applicants required by 37 CFR 1.56 to be a Devil's advocate by informing the Office of all known reasons as to why a patent should not issue on an application it is submitted that if patents are to be fairly examined in a non- adversarial manner there must be a corresponding duty for an examiner to give to an applicant corresponding

information. Doesn't a fair consideration of all factors relevant to patentability as is believed to be required by 35 USC 131 preclude an examiner from ignoring, hiding or concealing matters which may be unknown to the Applicant but known to the Office which might prove helpful in preparing a response such as this.

It can hardly be questioned that the Examiner responsible for the outstanding Office action knew of and presumably still knows of many items which the Applicant should know so as to be able to respond to the current action as effectively as possible. Isn't the object of the usual proceedings to obtain a patent to fairly consider the content of an application? Can this be accomplished when significant information is withheld from an Applicant?

The applicant considers that it can't . Because 35 USC 131 appears to require that an application be fairly examined the Applicant believes that he has been denied "due process" . As shown by the decision in the Valone arbitration previously discussed, this type of conduct by the Office is not unknown. Because of this denial it is considered that the entire content of the 50 pages of argumentative rejections and objections in the preceding Office action should be withdrawn as being improperly set forth in violation of 35 USC 13l and, more significantly as amounting to a denial of due process.

This action is requested. This request is intended to be a transversal of all of such matters. Undoubtedly there are matters known to the Examiner but not known the application whichwould have been of significant assistance in the preparation of this response, It s is considered that it would have been impossible for the Examiner to have prepared the outstanding Office action without locating at least some information favorable to this applicant in examining this application on a controversial topic but that the SAWS policy had the effect of precluding him from taking any action

in connection with this applicant which might be considered to be favorable to the applicant.

Conclusion

There is no reason for the Office to refuse patent applications on the non statutory "SAWS" grounds such as that the issuance of a oatent relating to such subject matter or might otherwise be objectionable to some individual or group, might cause the Office some embarrassment or ridicule and that this might lead to undesired Congressional attitudes or similar consequences. Similarly there is no reason for the Office to withhold a fair. impartial examination on applications in fields which might result in the noted consequences. Consistently in the past the Office has issued patents which have often caused its conduct to be questioned. Why should there be any change in this past procedure at this time?. Liberality in the grant of patents in the past has presumably resulted in more benefit to US society than the refusal of patents on selected topics on the basis of "secret law".

The proceedings relative to the subject matter of the present application gives the impression that the subject matter of this case is one of those topics and that patent protection on it has been refused by "throwing the book" in any and every manner reasonably possible. This has included not examining the application in a fair manner under 35 USC 131 and by ignoring the realities of a multitude of factors and by not fairly considering that citations and decisions on a species of the generic concept of cold fusion are not meaningful with respect to the patentability of a distinctly different species under this concept.

In view of all that has been stated a favorable and fair reconsideration of tis application is requested. If, as it is reconsidered, the Examiner has any difficulty in

locating the dissertations and theses discussed please advise the Applicant . If requested he will make an additional effort to make these documents available so the Examiner can study them. It is believed that the fact that these and other items favorable to the applicant have been considered by the Office should be indicated on the record.

Respectfully submitted-

~~Aug. , 2006~~ March 26, 2007 3-26-07

John Dash, Applicant, on behalf or himself and the assignee of the noted application.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Memorandum

DATE June 5, 1989

TO All Group Directors

FROM Kenneth L. Cage, Director
Group 220

SUBJECT Cold Fusion Applications

RECEIVED
1989 JUN -6 PM 4:05
DIRECTOR'S OFFICE
GROUP 220

Although the media attention relating to cold fusion has dimished, we are just now beginning to see a large number of applications relating to this subject. Although we are attempting to identify all of these applications in the pre-examination screening process, there is a possibility that a few applications may slip through without being identified. Please have your examiners be on the look out for any application that may relate to cold fusion. Some of the areas where a cold fusion application might be filed are:

Fuel Cells	class 429
Electrochemistry	class 204
Power plant	class 60
Radiant energy	class 250
Helium production	class 423

If one of your examiners should receive an application relating to cold fusion, he or she should check to make sure the words "COLD FUSION" are stamped on the file wrapper. If not, the application should be referred to Licensing and Review, CP4-10C23 for marking. Also, any action on one of these applications should be routed through the Group 220 Director's Office and the Office of the Assistant Commissioner for Patents prior to mailing.

Thank you for your cooperation. Should have any questions, please contact me.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Mtg. on 4/24/06

DATE: March 27, 2006

TO: TC 2800 managers

FROM: Janice A. Falcone, Group Director
Sharon Gibson, Group Director
Robert Oberleitner, Group Director
Richard K. Seidel, Group Director
Arthur Grimley, Acting Group Director

SUBJECT: Reminder on TC 2800 Guidelines for Sensitive Application Warning System (SAWS) Program Reminder

This is to remind our personnel that Technology Center 2800 has in place a SAWS program based on the following guidelines. All TC 2800 managers must remind their examiners of this program and its implementation.

Attached is the updated TC 2800 SAWS program. Please review and disseminate.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SPECIAL APPLICATION WARNING SYSTEM (SAWS)

Technology Center 2800
March 27, 2006

I. PROGRAM OVERVIEW:

The SAWS program was designed to assist in processing of patent applications identified as claiming subject matter of special interest that, if issued, would potentially generate high publicity or would potentially have a strong impact in the patent community. It is also an information gathering system to apprise various segments of the USPTO of these patent applications.

This program applies to all pending applications and reexamination proceedings (reexams).

As a program to assist in processing of patent applications and patents undergoing reexamination, it is intended to ensure that the examination standards and guidelines are applied properly to such applications and reexams that include sensitive or noteworthy subject matter.

As an information gathering system, the SAWS program should identify applications and reexams that, if issued as a patent or reexamination certificate, would be controversial or noteworthy.

The initial identification of SAWS applications/reexams is performed by the examiners (may also include managers and classifiers). Therefore, it is important that examiners stay informed about this program and the identification criteria.

Independent of the SAWS program, examiners are encouraged to bring to their supervisor's attention any application/reexam that raises issues that they are uncertain how to handle. Supervisors are responsible for determining which applications/reexams proceed through the SAWS program versus those applications/reexams having other issues which are normally addressed by existing examination procedures and established examination/re-examination guidelines.

II. OPERATIONAL OVERVIEW:

TC 2800 handles the SAWS program based upon a tiered process of application/reexams identification. This process relies on Examiners and SPEs to identify these applications/reexams, and a SAWS screening committee to verify their status. The SAWS screening committee comprises the home SPE, at least one of the following managers in the TC 2800 Quality Center:

Cassandra Spyrou, Clayton LaBalle and Hien H. Phan, and another TC 2800 management official.

Applications/Reexams which have been identified and verified as containing SAWS material are reported the TC Directors, and as needed, a SAWS memorandum is forwarded to the Deputy Commissioner for Patent Operations and the Deputy Commissioner for Patent Examination Policy prior to allowance or forwarded to the Board of Patent Appeals and Interferences (BPAI) when an appeal is forwarded to the jurisdiction of the BPAI.

A. Technology Center 2800 Practice:

1. Examiners are the first line of review since they are the most knowledgeable about the pending claims and application/reexamination issues. Examiners will report potential SAWS applications/reexams to their SPE. Upon approval of the SPE, the case will be brought by the SPE to Clayton LaBalle, Cassandra Spyrou or Hien H. Phan for entering the SAWS application/reexam number into the TC 2800 tracking system.

2. Flagging an identified SAWS application/reexam in PALM to ensure that the application/reexam cannot be allowed or an NIRC issued until the flag has been removed.

3. TC 2800 has established a screening mechanism to remove non-SAWS applications/reexams from their SAWS designation. This screening mechanism permits a second review and will result in a recommendation as to whether the application/reexam contains SAWS subject matter. The SAWS screening committee will perform the second screening review.

4. Applications/reexams that have been through the TC screening mechanism and have been identified as SAWS applications/reexams will be brought to the attention of the TC Directors. The TC Director will bring them to the attention of the Deputy Commissioner for Patent Operations and the Deputy Commissioner for Patent Examination Policy.

5. For uniformity and process improvements, a SPRE, QAS, or a SAWS TC-screening committee must be utilized. A SPRE, QAS, or a SAWS TC-screening committee will be tasked to periodically review the SAWS processing guidelines and criteria to continually update and revise the program as needed.

6. Placing a PALM Flag on subject classes, which encompass sensitive subject matter until a review of these cases is performed upon allowance (such as business methods, class 705).

7. A reminder and an updated SAWS criteria list will be distributed, at least semi-annually, to examiners to stress the importance of SAWS application identification. All newly hired examiners should be made aware of this TC 2800 SAWS program

B. Subject matter of special interest in TC 2800

1. Perpetual motion machines; classes 310 and 290
2. Anti-gravity devices
3. Room temperature superconductivity; class 310
4. Free energy – Tachyons, etc.
5. Gain-Assisted Superluminal Light Propagation (faster than the speed of light); class 702, 359
6. Other matters that violate the general laws of physics; classes 73, 290.
7. Applications containing claims to subject matter which, if issued, would generate unfavorable publicity for the USPTO, class 84, 702.
8. Reexamination proceedings involving patents in litigation and:
   The court decision/verdict is subject to review by the Supreme Court
   The court decision includes high monetary awards
   The technology and companies involved would likely generate high publicity

C. Corps-wide Potential SAWS subject Matter

1. Applications with a very old effective filing date (pre-Gatt – before June 8, 1995) with broad claim scope.
2. Application with pioneering scope.
3. Applications dealing with inventions that, if issued, would potentially generate extensive publicity.
4. Applications with objectionable or derogatory subject matter,
5. Applications with inventions that would harm people or the environment, compromise national security or public safety.
6. Director's Ordered reexams except those ordered due to failure to considered timely filed prior art or due to prior art citation under 37 CFR §1.501.